allow the real intention to be shown would, in effect, give validity to a writing as a will in spite of its terms which unambiguously assert that it is something else; while in the other case, the effect is not to give validity to the instrument as something else, but merely to show that it is not what it purports to be.

It is obvious that if extrinsic evidence is excluded in these cases, the real intention of the testator may, in some instances, be defeated.[14] In the one case, the deceased is declared intestate although the instrument was intended as his will, and in the other, an instrument though not executed with testamentary intent, is given effect as a will, contrary to the intention of the maker. It is likewise obvious that to admit extrinsic evidence might often result in the defeat of the maker's intention by fraudulent testimony. Its admission tends to subject all wills to the parol story that the testator did not mean what he said; or to make a will for the deceased where none was intended. The cases admitting it are careful to observe that the *prima facie* meaning may be shown not to be the real meaning only by the most clear and cogent proof.[15] The Statute of Wills affords an instance where certain requirements, though sometimes defeating intention and working hardship, are considered necessary for the prevention of fraud; and, having due regard for the case where the instrument is ambiguous, the exclusion of extrinsic evidence in the cases under discussion may be deemed salutary in safeguarding the intention of the testator.[16]

RIGHT OF A HOMICIDE TO ACQUIRE PROPERTY AS A RESULT OF HIS CRIME.—The question as to whether a person who has slain another may profit by the death of his victim, has not often been raised for determination in courts of last resort. It is an interesting question, however, and especially so in view of the comparative frequency of its appearance in recent years. Broadly speaking, there are three classes of cases in which this point presents itself for consideration: (1) where the beneficiary of an insurance policy has killed the insured, and seeks to collect the insurance; (2) where one who is a devisee has slain his testator, and subsequently claims the devise; (3) where the slayer of an intestate seeks, either at common law or under some statute of descent and distribution, to share in the estate of the deceased. Of course, the action is usually not brought by the murderer himself, but by someone claiming under him as assignee, heir or personal representative. The rights to be considered, however, are those of the criminal, barring the exceptional case of an assignee who is an innocent purchaser for value.

In the two earliest cases discussing this question, in England and the United States, the murderer had secured insurance upon the life of his victim with the intention of precipitating the latter's death and collecting the value of the policy.[1] It was held in each case that the policy was void, as it had been obtained with intent to defraud;

[14]Dodson *v.* Dodson (1905) 142 Mich. 586; Clay *v.* Layton, *supra.*

[15]See Lister *v.* Smith, *supra.*

[16]See note entitled "The Admissibility of a Testator's Declaration Disclosing Intention", 10 Columbia Law Rev., 469.

[1]The Prince of Wales, etc. Assn. Co. *v.* Palmer (1858) 25 Beav. 605; New York Mutual Life Ins. Co. *v.* Armstrong (1886) 117 U. S. 591.

but the American court added that mere proof that the beneficiary had caused the death of the assured by felonious means was sufficient to defeat a recovery by him on the policy, as to permit recovery would be like permitting recovery of insurance on a building which the beneficiary of the policy had feloniously burned. This dictum of the Supreme Court is now settled law, both in this country and in England.[2] The denial of payment in these cases is based upon the doctrine that it is against public policy to permit a person to benefit by his criminal act;[3] it is not an added punishment to that prescribed by law for the homicide, but merely a condition implied by law in the interpretation of the contract of insurance.[4] In order to defeat recovery by the beneficiary, it is not necessary to show that the purpose of the killing was to obtain the proceeds of the policy; all that is needed is proof that the act was intentional.[5] It is recognized, however, that this rule of public policy, which prevents a murderer, or one claiming under him, from benefiting by his criminal act, ought not to be extended further than is absolutely necessary for the protection of public interests.[6] So the insurer will not be exempted from liability on the policy, where a resulting trust can be declared in favor of the deceased's estate,[7] or in favor of those who are next entitled to take upon disqualification of the primary beneficiary.[8]

A similar rule is applied by the courts in cases of the devolution of property by devise. It has been held that a devisee cannot take under the will of a testator whose death has been caused by the felonious act of the devisee himself.[9] In applying this rule, the court of last appeal just cited, held that no distinction could be made between a death caused by murder and one caused by manslaughter. It is submitted, however, that this is an extreme view, which should not be generally accepted, as in many cases of manslaughter the element of intent is wholly lacking, and it would be most harsh to cut off the rights of a devisee who had accidentally killed his testator.[10] As in the insurance cases, this doctrine should be cautiously applied and limited to the immediate requirements of public safety and morality. The fact that the beneficiary under a will caused the death of the testator by felonious means does not invalidate the devise, and,

[2]Schmidt *v.* Northern Life Assn. (1900) 112 Iowa 41; Knights of Honor *v.* Menkhausen (1904) 209 Ill. 277; see Cleaver *v.* Mutual Reserve Fund Life Assn., L. R. [1892] 1 Q. B. 147.

[3]See Cleaver *v.* Mutual Reserve Fund Life Assn., *supra.*

[4]See Schreiner *v.* High Court, etc. (1890) 35 Ill. App. 576.

[5]See Schreiner *v.* High Court, etc., *supra.* Thus the beneficiary's claim is not barred where he was insane at the time of the murder; Holdom *v.* Ancient Order, etc. (1896) 159 Ill. 619, reversing s. c. (1894) 51 Ill. App. 200; though an insurance company can protect itself against this contingency by an express stipulation in the policy. See 14 Columbia Law Rev., 172.

[6]See Cleaver *v.* Mutual Reserve Fund Life Assn., *supra,* p. 151.

[7]See Cleaver *v.* Mutual Reserve Fund Life Assn., *supra*; Schmidt *v.* Northern Life Assn., *supra*; *cf.* New York Life Ins. Co. *v.* Davis (1899) 96 Va. 737.

[8]Knights of Honor *v.* Menkhausen, *supra.*

[9]Lundy *v.* Lundy (1895) 24 Can. Sup. Ct. 650, reversing McKinnon *v.* Lundy (1894) 21 Ont. App. 560, which reversed s. c. (1893) 24 Ont. Rep. 132.

[10]See McKinnon *v.* Lundy (1894) 21 Ont. App. 560.

according to New York decisions, the only relief which can be obtained against the beneficiary is equitable and injunctive, by way of preventing the enforcement of his legal rights.[11] The criminal, therefore, receives the legal title, but equity, acting *in personam,* will declare him a trustee *ex maleficio* for the benefit of those who are entitled to the property as a result of his disqualification, and will deprive him of the fruits of his iniquity.[12]

Where a husband murders his wife, or an heir his ancestor, the common law rules of survivorship and succession will not operate in favor of the felon.[13] The common law maxim that no one shall be permitted to profit by his iniquity, overrides the ordinary principles of descent and distribution. A very different question arises, however, where the devolution of the intestate's property is governed by some positive statutory provision. Contracts of insurance, and wills, may be interpreted in the light of public policy, principles of the common law are subject to exceptions based upon its fundamental maxims, but where the legislature has provided, in plain and unambiguous language, rules for the descent and distribution of an intestate's estate, there is no room for construction and interpretation, and the property must descend to the persons designated by the statute.[14] Neither law nor equity may interfere to take the property from the murderer and give it to another, for such action would amount to the addition of an exception or limitation to a statute, absolute and peremptory in its terms, and would constitute a usurpation of legislative functions by the judiciary.[15] This principle of statutory construction is clearly and forcefully enunciated in the recent case of *Wall* v. *Pfanschmidt* (Ill. 1914) 106 N. E. 785. The dictum asserted in *Riggs* v. *Palmer,*[16] that the operation not only of contracts, but even of laws, is to be controlled by the maxims of the common law, has been, therefore, either rejected or greatly confined in its application.[17] Even the New York courts now tend to limit the effect of this decision more and more, as is shown in the recent case of *In re Wolf* (Sur. Ct., N. Y. County, 1914) 150 N. Y. Supp. 738.[18] The only proper way to avoid

[11]See Ellerson *v.* Westcott (1896) 148 N. Y. 149, reversing s. c. (N. Y. 1895) 88 Hun 389. This case limits the earlier decision of Riggs *v.* Palmer (1889) 115 N. Y. 506.

[12]This view is explained and approved by Professor Ames in his Lectures on Legal History, pp. 310-322.

[13]See Box *v.* Lanier (1903) 112 Tenn. 393; 4 Columbia Law Rev., 513.

[14]Owens *v.* Owens (1888) 100 N. C. 240; Deem *v.* Millikin (1892) 6 Ohio C. C. 357, affirmed without opinion (1895) 53 Ohio St. 668; Shellenberger *v.* Ransom (1894) 41 Neb. 631, reversing s. c. (1891) 31 Neb. 61; Carpenter's Estate (1895) 170 Pa. 203; Kuhn *v.* Kuhn (1904) 125 Iowa 449; Gollnik *v.* Mengel (1910) 112 Minn. 349; McAllister *v.* Fair (1906) 72 Kan. 533; Holloway *v.* McCormick (1913) 41 Okla. 1; Hill *v.* Noland (Tex. Civ. App. 1912) 149 S. W. 288. The only decision *contra* is Perry *v.* Strawbridge (1907) 209 Mo. 621, in which the court admits that the authority is all the other way.

[15]*Cf.* Bosley *v.* Mattingly (Ky. 1853) 14 B. Monr. 89; United States *v.* Fisher (1805) 2 Cranch 358, 399.

[16]*Supra.*

[17]See Wharton, Homicide (3rd ed.) § 667.

[18]In this case it was held that a man who had killed his wife, while intending to kill her paramour, ought not to be barred from sharing in her estate under the Statute of Distributions, "because he had not the slightest intention of killing his wife and profiting by her death."

the undesirable result of allowing murderers to share in the distribution of the estates of their victims, is to cause the legislatures of our several States to enact carefully worded statutes, establishing exceptions to our present laws of descent and distribution in this class of cases.[19]

PROHIBITION OF EMPLOYMENT OF ALIENS IN CONSTRUCTION OF PUBLIC WORKS.—The power of the legislature to protect the health, morals, and safety of the public, has been extended by a liberal interpretation of these terms to cover any provision, by reasonable means, for the general welfare.[1] As the exercise of the police power is subject to the Fourteenth Amendment,[2] however, no statute may be justified under the police power which arbitrarily infringes property rights or personal liberty, or which makes any unreasonable discrimination.[3] The question has been raised in the recent case of *People* v. *Crane* (App. Div., 1st Dept., 1914) 150 N. Y. Supp. 933,[4] whether a statute prohibiting the employment of aliens in the construction of public works is a reasonable exercise of the police power. Statutes have been upheld prohibiting aliens from killing wild birds or animals, or carrying shotguns,[5] or from obtaining licenses for selling liquor,[6] or peddling.[7] In all these cases, however, there is a clear connection between the discrimination and the public welfare; but in the present statute, the connection is not so apparent. The public works would not be any better built, since aliens are as well fitted as citizens of the United

[19]For examples of statutes applicable to this class of cases, see Kuhn *v.* Kuhn, *supra*; *In re* Kirby's Estate (1912) 162 Cal. 91; *In re* Mertes' Estate (Ind. 1914) 104 N. E. 753; Bruns *v.* Cope (Ind. 1914) 105 N. E. 471.

[1]People *v.* King (1888) 110 N. Y. 418; People *v.* Warden (1905) 183 N. Y. 223; Lawton *v.* Steele (1894) 152 U. S. 133, 137.

[2]The police power does not come into conflict with the Fourteenth Amendment so long as the discrimination is reasonable. Barbier *v.* Connolly (1884) 113 U. S. 27.

[3]People *v.* Williams (1907) 189 N. Y. 131; People *v.* Wilber (1910) 198 N. Y. 1. The discrimination must be clearly arbitrary and unreasonable, not merely possibly so. See Bachtel *v.* Wilson (1906) 204 U. S. 36, 41.

[4]The Appellate Division refused to enjoin the employment of aliens in the construction of the subway, first, because the statute was contrary to the Fourteenth Amendment, and, secondly, because the subway was not a public work. The court did not think it necessary to decide whether the statute violates our treaty with Italy. There have been two decisions on this point in New York; one holding the statute constitutional, People *v.* Ludington's Sons (N. Y. 1911) 74 Misc. 363, the other holding it unconstitutional. People *v.* Warren (N. Y. 1895) 13 Misc. 615. See also 14 Columbia Law Rev., 667.

[5]Patsone *v.* Pennsylvania (1913) 232 U. S. 138. The discrimination here was declared reasonable on the ground that it defined those from whom the evil could be said to be feared.

[6]Trageser *v.* Gray (1890) 73 Md. 250; see 12 Columbia Law Rev., 737.

[7]Commonwealth *v.* Hana (1907) 195 Mass. 262. As peddling affords a great opportunity for fraud, it is desirable for purposes of suit, that peddlers should be citizens with a fixed domicile. The Supreme Court of Maine, however, came to a different conclusion, because it did not consider peddling so open to fraud. State *v.* Montgomery (1900) 94 Me. 192.